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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1971

No. 71-5463

BETTY I. GRUBB; and CHRISTIE GRUBB and STEVEN GRUBB, minors, by their guardian ad litem and trustee, Betty I. Grubb, *Petitioners*,

vs.

WORKMEN'S COMPENSATION APPEALS BOARD OF THE STATE OF CALIFORNIA and PACIFIC GAS AND ELECTRIC COMPANY, *Respondents*.

On Petition for a Writ of Certiorari to the Supreme Court of California

BRIEF FOR RESPONDENT PACIFIC GAS AND ELECTRIC COMPANY IN OPPOSITION

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OPINIONS BELOW

The Opinion and Decision after Reconsideration of the Workmen's Compensation Appeals Board (Appendix A of Petition) is not reported. The Order of

the Court of Appeal of the State of California, First Appellate District, Division Three (Appendix C of petition) was entered without opinion. A report of such action, however, was made unofficially at 36 California Compensation Cases 250. A copy of such unofficial report is attached hereto as Appendix A. The order of the Supreme Court of the State of California denying a hearing (Appendix B of Petition) was entered without opinion.

The final Order of the California Supreme Court (Appendix B of petition) was entered June 23, 1971. The Petition for Certiorari was filed within ninety days of that date.

JURISDICTION

Petitioners purport to invoke the jurisdiction of this Court under 28 U.S.C. 2101(c). However, Petitioners apparently intend to invoke the jurisdiction of this Court under 28 U.S.C. 1257(3).

QUESTION PRESENTED

Whether the California system of judicial review in workmen's compensation cases violates either the due process clause or the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

STATUTES INVOLVED

Section 5810 and Sections 5950 through 5956 of the Labor Code of California read as follows:

"5810. The orders, findings, decisions, or awards of the appeals board made and entered under this division may be reviewed by the courts specified in Sections 5950 to 5956 within the time and in the manner therein specified and not otherwise.

"5950. Any person affected by an order, decision, or award of the appeals board may, within the time limit specified in this section, apply to the Supreme Court or to the court of appeal for the appellate district in which he resides, for a writ of review, for the purpose of inquiring into and determining the lawfulness of the original order, decision, or award or of the order, decision, or award following reconsideration. The application for writ of review must be made within 30 days after a petition for reconsideration is denied, or, if a petition is granted or reconsideration is had on the appeal board's own motion, within 30 days after the filing of the order, decision, or award following reconsideration.

"5951. The writ of review shall be made returnable at a time and place then or thereafter specified by court order and shall direct the appeals board to certify its record in the case to the court within the time therein specified. No new or additional evidence shall be introduced in such court, but the cause shall be heard on the record of the appeals board, as certified to by it.

"5952. The review by the court shall not be extended further than to determine, based upon the entire record which shall be certified by the appeals board, whether:

"(a) the appeals board acted without or in excess of its powers.

"(b) The order, decision, or award was procured by fraud.

"(c) The order, decision, or award was unreasonable.

"(d) The order, decision, or award was not supported by substantial evidence.

"(e) If findings of fact are made, such findings of fact support the order, decision, or award under review.

"Nothing in this section shall permit the court to hold a trial de novo, to take evidence, or to exercise its independent judgment on the evidence.

"5953. The findings and conclusions of the appeals board on questions of fact are conclusive and final and are not subject to review. Such questions of fact shall include ultimate facts and the findings and conclusions of the appeals board. The appeals board and each party to the action or proceeding before the appeals board shall have the right to appear in the review proceeding. Upon the hearing, the court shall enter judgment either affirming or annulling the order, decision, or award, or the court may remand the case for further proceedings before the appeals board.

"5954. The provisions of the Code of Civil Procedure relating to writs of review shall, so

far as applicable, apply to proceedings in the courts under the provisions of this article. A copy of every pleading filed pursuant to the terms of this article shall be served on the appeals board and upon every party who entered an appearance in the action before the appeals board and whose interest therein is adverse to the party filing such pleading.

"5955. No court of this state, except the Supreme Court and the courts of appeal to the extent herein specified, has jurisdiction to review, reverse, correct, or annul any order, rule, decision, or award of the appeals board, or to suspend or delay the operation or execution thereof, or to restrain, enjoin, or interfere with the appeals board in the performance of its duties but a writ of mandate shall lie from the Supreme Court or a court of appeal in all proper cases.

"5956. The filing of a petition for, or the pendency of, a writ of review shall not of itself stay or suspend the operation of any order, rule, decision, or award of the appeals board, but the court before which the petition is filed may stay or suspend, in whole or in part, the operation of the order, decision, or award of the appeals board subject to review, upon the terms and conditions which it by order directs, except as provided in Article 3 of this chapter."

STATEMENT

Petitioners' decedent, Warren Grubb, was employed by Respondent Pacific Gas and Electric Company. He suffered a heart attack while mowing his lawn at

home on Saturday, June 10, 1967. Following further pains during the intervening period, he suffered a fatal seizure at the office June 21, 1967. After the initial attack, his family physician, Dr. Patch, first advised Mr. Grubb to stay home from work. Following an electrocardiogram and discussion with his patient, however, Dr. Patch decided that work would be less stressful for this patient than remaining at home.

Petitioners' claim for a compensation death benefit was denied by the employer, which is self-insured. At the hearing held before a referee of Respondent Workmen's Compensation Appeals Board, Dr. Patch testified that the duties of decedent's job, described to him in a hypothetical question, constituted precisely "the ideal situation" he had envisioned in returning Mr. Grubb to his work. (R.T., June 17, 1969, morning session, p. 29, lines 6-8.)

> "A. Warren's personality was such that to be limited and confined was very challenging to him. He was an earnest young man who felt compelled to do his work.
>
> Q. And if therefore he had been taken off the job and sent home, what adverse effect would you have expected that would not have attained, in your opinion, by letting him go to work?
>
> A. I felt there would be a great deal more anxiety on his part, which would make more work load for his heart to be at rest than to be at work.
>
> Q. In other words, the best therapy would be for him to go to work.
>
> A. I felt so."

Similar testimony was given by the employer's expert witness, Dr. Mintz, a specialist in cardiology, as follows:

> "No, his work activity as has been described to me, does not appear to me to have been a factor in the final outcome.
>
> * * * * *
>
> "He appears to have been engaged in what was in fact a very sedentary activity, as I understand it, at the time of his death and for some period prior to that he had been seated and engaged in work which does not seem to have been heavy or emotionally exciting in any way. This might be the same—he might have well been engaged in the very same activity had he been in the hospital." (R.T., Afternoon Hearing, June 17, 1969, p. 11, line 21 to p. 12, line 5.)

Altogether, the trial consumed three full days. The transcript of trial testimony alone occupies six volumes, totaling 237 pages. Seven witnesses were heard, including two expert medical witnesses. Besides this testimony, documentary evidence was received, including depositions from seven other persons, totaling an additional 107 pages of transcript. Documentary evidence also included 100 pages of medical and other records.

The trial referee denied death benefits, finding that Mr. Grubb's employment made no causal contribution to his demise. In her Report on Decisions, the trial referee stated, "In my opinion the applicants have not proved their case. I do not believe that there is any evidence in the record that the decedent's duties in the

days, weeks, months or years before his death were sufficiently stressful physically or emotionally to aggravate an underlying heart condition much less to cause it. The work that he was doing in the months before his death was routinely clerical."

In an attempt to reverse the referee's decision, Petitioners filed a 58-page Petition for Reconsideration before the Workmen's Compensation Appeals Board. The employer filed a 33-page Answer. In her Report and Recommendation on Petitions for Reconsideration, the referee stated, in part, as follows:

> "Not all deaths resulting from heart conditions are compensable. An employer is responsible only where the evidence shows that the work caused or contributed to the death. Decedent herein died as a result of a heart condition on the job. The fact that the death occurred on the job does not mean it is an industrial death. In my opinion his death was the result of a natural progression of a pre-existing condition and the routine clerical work that he was doing in the months before his death did not play any part in his death."

The Workmen's Compensation Appeals Board granted the Petition for Reconsideration, but thereafter they issued a 30-page Opinion and Decision after Reconsideration (Appendix A of Petition) affirming the decision of the trial referee.

Petitioners thereupon filed an 85-page Petition for Writ of Review in the Court of Appeal of California. A 43-page Answer was filed by the Workmen's Compensation Appeals Board and an 8-page Answer was filed by the employer. Still in the Court of the Appeal,

Petitioners then filed a 34-page Reply (which is included, as an appendix, within Appendix B to Petition).

Following issuance by the Court of Appeal of its Order denying the Petition for Writ of Review (Appendix C of Petition), Petitioners filed an 85-page *Petition for Hearing in the Supreme Court of California* (Exhibit B of Petition), adding thereto as an exhibit the aforementioned 34-page reply filed in the Court of Appeal. In the Supreme Court of California, the Workmen's Compensation Appeals Board filed a 6-page answer incorporating, by reference, their answer in the Court of Appeal. The employer filed a new, 13-page answer.

The Supreme Court of California entered its Order denying a hearing (Exhibit B of Petition).

Despite these numerous decisions and voluminous filings, Petitioners complain to this Court that the California system of judicial review has denied them due process and equal protection.

ARGUMENT

Respondent Pacific Gas and Electric Company fully approves, and incorporates herein by reference, the brief of Respondent Workmen's Compensation Appeals Board.

The petition herein refers to the Workmen's Compensation Appeals Board as an administrative agency. Actually, the Supreme Court of California has held that the Workmen's Compensation Appeals Board

(formerly called the Industrial Accident Commission) is a court, albeit a court of limited jurisdiction. *Bankers Indemnity Ins. Co. v. I.A.C. (Merzoian),* 4 Cal.2d 89, 97; *Western Metal Supply Co. v. Pillsbury,* 172 Cal. 407; *Pacific Coast Casualty Co. v. Pillsbury,* 171 Cal. 319, 322; *Solari v. Atlas-Universal Service, Inc.,* 215 Cal.App.2d, 587, 593. See also California Labor Code Sections 111, 112, 130, 132, 133, 134, 5300, and 5301.

Labor Code Section 5806 provides that only a certified copy is needed to transform a decision of the Workmen's Compensation Appeals Board into the judgment of the Superior Court, California's court of general jurisdiction.

At page 11 of the petition, it is noted that trial *de novo* is provided in the Superior Court except for proceedings of the Workmen's Compensation Appeals Board and the Public Utilities Commission of California. See also California Code of Civil Procedure Section 1107, and compare Rule 57 with Rule 58 of the California Rules of Court. In cases arising from the Public Utilities Commission, formerly called the Railroad Commission, California's writ of review procedure has frequently been upheld by this Court. See, e.g., *Napa Valley Electric Company v. Board of Railroad Commissioners,* 251 U.S. 366, and cases cited, wherein the procedure is termed "writ of certiorari or review." *Napa Valley Electric Company v. Board of Railroad Commissioners,* supra, 251 U.S. 366, 370. In the *Napa Valley Electric Company* case, this Court rejected a contention which is strikingly

similar to that of present Petitioners. In the words of this Court in that case, "the substance of the contention is that the court instead of hearing refused to hear, instead of adjudicating refused to adjudicate, and that from this negation of action or decision there cannot be an assertion of action or decision. . . ." *Napa Valley Electric Company v. Board of Railroad Commissioners,* supra, 251 U.S. 366, 371.

Within the California review system, Petitioners contend, the California courts have committed error in their interpretation of California law. Specifically, Petitioners contend that, despite the "substantial evidence" standard of review laid down by Labor Code Section 5952, the California courts have applied an "any evidence" standard. Petitioners have advanced no authority whatsoever to support the accuracy of such statement. Even assuming, *arguendo,* that Petitioners' statement (that California has applied "any evidence" rather than the statutory "substantial evidence" standard) is correct, "It is firmly established that a merely erroneous decision given by a state court in the regular course of judicial proceedings does not deprive the unsuccessful party of property without due process of law. *Arrowsmith v. Harmoning,* 118 U.S. 194, 195; *Iowa Central Ry. Co. v. Iowa,* 160 U.S. 389, 393; *Tracy v. Ginzberg,* 205 U.S. 170, 177; *Bonner v. Gorman,* 213 U.S. 86, 91; *McDonald v. Oregon, R.R. & Nav. Co.,* 233 U.S. 665, 669." *American Railway Express v. Kentucky,* 273 U.S. 269, 273.

The only authority cited by Petitioners in this connection is *Universal Camera Corporation v. Na-*

tional Labor Relations Board, 340 U.S. 474. Far from treating constitutional issues, or even state law, the *Universal Camera* case concerned the effect of Congressional amendment of a particular federal statute in proceedings by a federal court to review the actions of a particular federal agency.

Petitioners contend that the California courts have violated the equal protection clause of the Fourteenth Amendment by applying stricter evidentiary standards to heart death claims than they apply to other industrial cases. Again, Petitioners have failed to adduce any authority whatsoever to support the correctness of their contention (i.e., the contention that California does apply stricter standards to heart death cases). The *Wiseman* case cited by Petitioners (*Wiseman v. I.A.C.,* 46 Cal.2d 570) concerned a diametrically opposite question under California compensation law. Thus, under Labor Code Section 3600, compensation is granted for injuries "arising out of *and* in the course of the employment" (emphasis added). The question in the *Wiseman* case was whether the decedent was acting within the course of his employment; there is no question that his actions caused his death. Conversely, in the present case, there is no question that Petitioners' decedent was within the course of his employment at the time of his death. The question here was whether the death arose out of the employment; i.e., whether the employment causally contributed to the employee's demise.

Even if the California courts did apply stricter evidentiary standards in heart death cases — which

they do not—they would not thereby violate the equal protection clause of the Fourteenth Amendment. In decisions under the equal protection clause, this Court has consistently allowed the states broad latitude in the establishment and administration of workmen's compensation systems. Thus, this Court has held that complete exclusion of specified occupations from a state compensation law does not violate the equal protection clause. *Middleton v. Texas Power & Light Co.,* 249 U.S. 152; *N.Y. Cent. R. Co. v. White,* 243 U.S. 188. In the *Middleton* case, it was also held that equal protection was not violated, as to the employees, by making applicability of the compensation act entirely optional with particular employers — even though the employee's only remedy was quitting his job in hopes of finding employment with someone who had chosen to be covered by the act.

In *Martin v. Pittsburgh & L.E.R. Co.,* 203 U.S. 284, the State of Pennsylvania had enacted a statute severely limiting the rights of any person industrially injured on or about a railroad. The rights of such person against the railroad were restricted to the rights an employee of the railroad would have under like circumstances. This statute was upheld against due process objections.

I

DUE PROCESS DOES NOT REQUIRE ANY PARTICULAR PROCEDURAL FORMAT OR ANY RIGHT OF APPEAL WHATSOEVER

Petitioners contend the due process clause requires that their claim be heard by a court and heard on appeal. They cite no authority to support either contention. Both contentions have been rejected by prior decisions of this Court.

Thus, speaking in 1877, a relatively short time after enactment of the Fourteenth Amendment, this Court stated as follows:

> A most exhaustive judicial inquiry into the meaning of the words "due process of law", as found in the fifth amendment, resulted in the unanimous decision of this court, that they do not necessarily imply a regular proceeding in a court of justice, or after the manner of such courts. *Murray's Lessee et al. v. Hoboken Land and Improvement Co.,* 18 How. 272.
>
> * * *
>
> Is it not a little remarkable, that while this provision has been in the Constitution of the United States, as a restraint upon the authority of the Federal government, for nearly a century, and while, during all that time, the manner in which the powers of that government have been exercised has been watched with jealousy, and subjected to the most rigid criticism in all its branches, this special limitation upon its powers has rarely been invoked in the judicial forum or the more enlarged theatre of public discussion. But while it has been a part of the Constitution, as a restraint upon the power of the States, only

> a very few years, the docket of this court is crowded with cases in which we are asked to hold that State courts and State legislatures have deprived their own citizens of life, liberty, or property without due process of law. There is here abundant evidence that there exists some strange misconception of the scope of this provision as found in the fourteenth amendment. In fact, it would seem, from the character of many of the cases before us, and the arguments made in them, that the clause under consideration is looked upon as a means of bringing to the test of the decision of this court the abstract opinions of every unsuccessful litigant in a State court of the justice of the decision against him, and of the merits of the legislation on which such a decision may be founded.
>
> *Davidson v. City of New Orleans,* 96 U.S. 97, 102-104.

Speaking again in 1908, however, the Court was able to state the following:

> "Due process requires that the court which assumes to determine the rights of parties shall have jurisdiction, *Pennoyer v. Neff,* 95 U.S. 714, 733; *Scott v. McNeal,* 154 U.S. 34; *Old Wayne Life Association v. McDonough,* 204 U.S. 8, and that there shall be notice and opportunity for hearing given the parties, *Hovey v. Elliott,* 167 U.S. 409; *Roller v. Holly,* 176 U.S. 398; and see *Londoner v. Denver,* 210 U.S. 373. Subject to these two fundamental conditions, which seem to be universally prescribed in all systems of law established by civilized countries, this court has up to this time sustained all state laws, statutory or judicially

declared regulating procedure, evidence and methods of trial, and held them to be consistent with due process of law. *Walker v. Sauvinet,* 92 U.S. 90; *Re Converse,* 137 U.S. 624; *Caldwell v. Texas,* 137 U.S. 692; *Leeper v. Texas,* 139 U.S. 462; *Hallinger v. Davis,* 146 U.S. 314; *McNulty v. California,* 149 U.S. 645; *McKane v. Durston,* 153 U.S. 684; *Iowa Central v. Iowa,* 160 U.S. 389; *Lowe v. Kansas,* 163 U.S. 81; *Allen v. Georgia,* 166 U.S. 138; *Hodgson v. Vermont,* 168 U.S. 262; *Brown v. New Jersey,* 175 U.S. 172; *Bolln. v. Nebraska,* 176 U.S. 83; *Maxwell v. Dow,* 176 U.S. 581; *Simon v. Craft,* 182 U.S. 427; *West v. Louisiana,* 194 U.S. 258; *Marvin v. Trout,* 199 U.S. 212; *Rogers v. Peck,* 199 U.S. 425; *Howard v. Kentucky,* 200 U.S. 164; *Rawlins v. Georgia,* 201 U.S. 638; *Felts v. Murphy,* 201 U.S. 123."

Twining v. New Jersey, 211 U.S. 78, 110-111.

"[T]he due process clause of the Fourteenth Amendment does not necessitate that the proceedings in a state court should be by a particular mode, but only that there shall be a regular course of proceedings in which notice is given of the claim asserted and an opportunity afforded to defend against it. *Louisville & Nashville Railroad Co. v. Schmidt,* 177 U.S. 230, 236, and cases cited. If the essential requisites of full notice and an opportunity to defend were present, this court will accept the interpretation given by the state court as to the regularity under the state statute of the practice pursued in the particular case."

Simon v. Craft, 182 U.S. 427, 437.

"It is no longer open to contention that the due process clause of the Fourteenth Amendment to

> the Constitution of the United States does not control mere forms of procedure in state courts or regulate practice therein."
>
> *L. & N. R. Co. v. Schmidt,* 177 U.S. 230, 236.

In *Hardware, etc. Ins. Co. v. Glidden Co.,* 284 U.S. 151, the State of Minnesota had enacted a statute substituting determination by arbitration for trial in court on the issue of the amount of loss suffered under a fire insurance policy. This Court held "The Fourteenth Amendment neither implies that all trials must be by jury, nor guarantees any particular form or method of state procedure. See *Missouri ex rel. Hurwitz v. North,* 271 U.S. 40. In the exercise of that power and to satisfy a public need, a state may choose the remedy best adapted, in the legislative judgment, to protect the interests concerned, provided its choice is not unreasonable or arbitrary, and the procedure it adopts satisfies the constitutional requirements of reasonable notice and opportunity to be heard."

> *Hardware, etc. Ins. Co. v. Glidden Co.,* 284 U.S. 151, 158.

In particular, this Court has frequently rejected the contention of petitioners that the right to an appeal is guaranteed by the due process clause.

> "The machinery for review of the judgments of courts of first instance is wholly within the control of the state legislature. . . ."
>
> *Wagner Electric Mfg. Co. v. Lyndon,* 262 U.S. 226, 233.

> "As to the due process clause of the Fourteenth Amendment, it is sufficient to say that, as fre-

quently determined by this Court, the right of appeal is not essential to due process, provided that due process has already been accorded in the tribunal of first instance. *McKane v. Durston,* 153 U.S. 684, 687; *Pittsburgh, etc. Railway Co. v. Backus,* 154 U.S. 421, 427; *Reetz v. Michigan,* 188 U.S. 505, 508; *Rogers v. Peck,* 199 U.S. 425, 435; *Standard Oil Company of Indiana v. State of Missouri,* 224 U.S. 270, 286."

Ohio v. Akron Park District, 281 U.S. 74, 80.

In *Luckenbach S.S. Co. v. U.S.,* 272 U.S. 533, it had already been termed a "well settled rule" that "an appellate review is not essential to due process of law, but is a matter of grace. *McKane v. Durston,* 153 U.S. 684, 687; *Andrews v. Swartz,* 156 U.S. 272, 275; *Kohl v. Lehlback,* 160 U.S. 293, 297, 299; *Reetz v. Michigan,* 188 U.S. 505, 508; *The Francis Wright,* 105 U.S. 381, 386; *Montana Company v. St. Louis Mining and Milling Company,* 152 U.S. 160, 171."

Luckenbach S.S. Co. v. U.S., supra, 272 U.S. 533, 537.

"The due process clause does not guarantee to the citizen of a state any particular form or method of state procedure. Under it he may neither claim a right to trial by jury nor a right of appeal. Its requirements are satisfied if he has reasonable notice and reasonable opportunity to be heard and to present his claim or defense, due regard being had to the nature of the proceeding and the character of the rights which may be affected by it. *Reetz v. Michigan,* 188 U.S. 505, 508; *Hurwitz v. North,* 271 U.S. 40; *Bauman v. Ross,*

167 U.S. 548, 593; *Backus v. Union Depot Co., supra,* p. 569."

Dohany v. Rogers, 281 U.S. 362, 369.

II

EQUAL PROTECTION DOES NOT REQUIRE A STATE TO PROVIDE AN IDENTICAL REVIEW PROCEDURE FOR ALL TYPES OF PROCEEDINGS

Petitioners complain that their rights under the equal protection clause have been violated because California provides discretionary review (similar to the certiorari jurisdiction of this Court) in industrial accident cases, while mandatory appellate review (like the appeal jurisdiction of this Court) is provided in other situations.

In *Dohany v. Rogers,* supra, this Court has already stated that the equal protection clause does not require "uniformity of procedure. The legislature may classify litigation and adopt one type of procedure for one class and a different type for another." *Dohany v. Rogers,* supra, 281 U.S. 362, 369.

> "And, as our decisons show, there is nothing in the clauses of the Fourteenth Amendment guaranteeing due process and equal protection which converts an issue respecting the jurisdiction of a state court under the constitution and statutes of the State into anything other than a question of state law, the decision of which by the state court of last resort is binding upon this court. *Iowa Central Ry. Co. v. Iowa,* 160 U.S. 389, 393; *Castillo v. McConnico,* 168 U.S. 674, 683; *Rawlins v.*

Georgia, 201 U.S. 638; *Burt v. Smith,* 203 U.S. 129, 135; *Standard Oil Co. v. Missouri,* 224 U.S. 270, 280-281; *de Bearn v. Safe Deposit Co.,* 233 U.S. 24, 34; *McDonald v. Oregon R.R. & Navigation Co., ibid.,* 665, 669-670; *Missouri v. Lewis,* 101 U.S. 22, 30."

Gasquet v. Lapeyre, 242 U.S. 367, 369-370.

In a leading case on this point, *Missouri v. Lewis,* 101 U.S. 22, the State of Missouri even established different appellate procedures for proceedings of the same type. If a given type of case were tried in the City of St. Louis or certain specified counties, it would follow a separate appellate procedure. If the case were tried anywhere else within the state, it would follow a different appellate procedure entirely. It was held that this distinction did not violate the equal protection clause. A similar result was reached in *Chappell Chemical and Fertilizer Co. v. Sulphur Mines Co. of Virginia,* 172 U.S. 474, where, in otherwise indentical cases, only the litigants in Baltimore would lose their right to jury trial by failing to demand it promptly.

"The amendment could never have been intended to prevent a State from arranging and parcelling out the jurisdiction of its several courts at its discretion. No such restriction as this could have been in view, or could have been included, in the probibition (sic) that 'no State shall deny to any person within its jurisdiction the equal protection of the laws.' It is the right of every State to establish such courts as it sees fit, and to prescribe their several jurisdictions as to territorial extent, subject-matter, and amount, and the

finality and effect of their decisions, provided it does not encroach upon the proper jurisdiction of the United States, and does not abridge the privileges and immunities of citizens of the United States, and does not deprive any person of his rights without due process of law, nor deny to any person the equal protection of the laws, including the equal right to resort to the appropriate courts for redress. The last restriction, as to the equal protection of the laws, is not violated by any diversity in the jurisdiction of the several courts as to subject-matter, amount, or finality of decision, if all persons within the territorial limits of their respective jurisdictions have an equal right in like cases and under like circumstances, to resort to them for redress.

* * *

"It (the Fourteenth Amendment) means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and under like circumstances.

"The Fourteenth Amendment does not profess to secure to all persons in the United States the benefit of the same laws and the same remedies. . . Each State prescribes its own modes of judicial proceeding."

Missouri v. Lewis, supra, 101 U.S. 22, 30-31.

In the more recent case of *National Union of Marine Cooks v. Arnold,* 348 U.S. 37, the petitioner, like Petitioners in the present case, raised issues of due process and equal protection because an appeal was denied.

"We have no difficulty with the Equal Protection Clause because no showing has been made that anyone comparably situated has been treated differently from petitioner."

National Union of Marine Cooks v. Arnold, 348 U.S. 37, 41.

"While a statutory review is important and must be exercised without discrimination, such a review is not a requirement of due process. *District of Columbia v. Clawans,* 300 U.S. 617, 627; *Ohio v. Akron Park District,* 281 U.S. 74, 80; *Reetz v. Michigan,* 188 U.S. 505, 508; *McKane v. Durston,* 153 U.S. 684, 687-688."

National Union of Marine Cooks v. Arnold, 348 U.S. 37, 43.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

Dated: November 16, 1971.

Respectfully submitted,

DAWSON B. LEONARD,

Attorney for Respondent

Pacific Gas and Electric Company.

(Appendix A Follows)

Appendix A

Betty I. Grubb; and Christie Grubb and Steven Grubb, minors, by their guardian ad litem and trustee, Betty I. Grubb, Petitioners v. Workmen's Compensation Appeals Board; and Pacific Gas and Electric Company, Respondents.

W.C.A.B. Nos. 68 SF 221-075, 68 SF 221-076—Referee Emily B. Johnson

Civil No. 28564—Court of Appeal, First Appellate District, Division 3

For Petitioners—Robert J. Scolnik, Davis, Cowell & Bowe

For respondents—Rupert A. Pedrin, Richard E. Ryan

Arise out of employment—Heart disease—The opinion of a single physician, though in conflict with other medical opinion, and other evidence supported a finding that a fatal heart attack at work did not arise out of employment where the employee performed routine clerical duties and had suffered prior seizures during nonemployment activity. [See generally Hanna, California Law of Employee Injuries and Workmen's Compensation, Vol. 1, § 10.08[2][a]; Vol. 2, § 11.03[5][e].]

Digest of Case Denied Judicial Review

The widow and minor children of Warren Eli Grubb applied for death benefits alleging that Grubb's

death on June 21, 1967, resulted from cumulative and specific heart injuries caused by his employment with Pacific Gas and Electric Company. Grubb, 46½ years of age, first experienced severe chest pains and shortness of breath on Saturday, June 10, 1967, while moving a lawn mower at home. Later on the same day, while driving on a personal errand, he suffered shortness of breath and had to lie down in the front seat of his car. Grubb again suffered shortness of breath on the following day, Sunday, June 11, 1967, while carrying an ice chest at a picnic unrelated to his employment. Additional incidents of shortness of breath, weakness, and chest pains occurred during both employment and nonemployment related situations between June 12 and June 21, 1967. Grubb contacted his family physician, Dr. Peter E. Patch, on June 13, 1967. An electrocardiogram was taken, and after learning the results, Dr. Patch advised Grubb by telephone on the afternoon of June 13, 1967, that Grubb could return to work, should be careful, should cut down his weight, and take exercises by way of brisk walks. Because of his recurring symptoms, Grubb asked his wife to arrange another appointment with Dr. Patch, but this could not be arranged prior to Grubb's death. Grubb was stricken at his desk at approximately 2:30 p.m. on June 21, 1967, and died at a hospital shortly thereafter, the cause of death being a coronary thrombosis.

The evidence in the proceedings was extensive and is discussed at great length by the parties to the instant proceedings, petitioners having filed an 85-page peti-

tion and 34-page reply, and the Appeals Board having filed a 43-page answer. In addition to medical evidence consisting of the opinions of Dr. Patch and Dr. Fredric Mintz, a cardiologist, several lay witnesses testified, including the widow, her mother, Grubb's supervisor, and certain of Grubb's fellow employees. Petitioners refer extensively to evidence establishing stresses and strains imposed by Grubb's employment duties. The Appeals Board and the employer cite the evidence as establishing that Grubb's duties, though supervisory, involved sedentary work of a routine clerical nature. Dr. Patch reported and testified that in his opinion death was due to a sudden onset of abnormal heart rhythm which may well have been related to stress caused by Grubb's employment. Dr. Mintz testified in response to a hypothetical question that, as described to him, Grubb's work activity did not appear to have been a factor in causing death. Dr. Mintz also stated that Grubb appeared to have been engaged in very sedentary activity which did not seem to have been heavy or emotionally exciting in any way, and that he might well have engaged in the very same activity had he been in the hospital. The referee found that Grubb's death did not arise out of and occur in the course of his employment. The Appeals Board granted reconsideration, but subsequently, in an Opinion and Decision After Reconsideration, the Board affirmed and adopted the findings of the referee.

Petitioners principally contended that (1) the uncontroverted evidence and compelling inferences clearly establish that Grubb's employment aggravated

his underlying heart condition and precipitated his death; and (2) Grubb's death from unexplained causes occurring at work raised a presumption that his death was work-related. Respondents contended that (1) the opinion of a single physician, Dr. Mintz, though in conflict with other medical opinion, and the other evidence in the record, including the evidence of the prior seizures and the sedentary nature of Grubb's duties, supported the conclusion that death did not arise out of employment; and (2) the presumption as to compensability of death resulting from unexplained causes during employment was inapplicable as the cause of death in the instant case was known.

WRIT DENIED May 10, 1971.

Medical Annotation

Coronary Thrombosis:

Schmidt, Attorneys' Dictionary of Medicine, Vol. 1, p. 224